



# UNISON duty of care handbook

For members working in health and social care



“ At a time of change, patients and service users depend more than ever on the integrity of care professionals. This handbook is a valuable guide to health and care professionals' responsibilities and rights, and to sources of help when it may be hard to know the right thing to do and even harder to do it. ”

**Harry Cayton**, chief executive, Council for Healthcare Regulatory Excellence

“ Safeguarding the public and delivering high quality patient care are essential. Key to this is creating a culture where nurses and midwives are able to appropriately raise concerns, particularly in a time of significant structural change across health care organisations. This handbook is a useful supplement to the Code and other NMC standards and guidance which specify the responsibilities of nurses and midwives in raising and escalating concerns. ”

**Professor Dickon Weir-Hughes**, chief executive and registrar,  
Nursing and Midwifery Council

“ The Health Professions Council (HPC) is committed to protecting the public and ensuring that professionals are meeting UK standards for their training, professional skills, behaviour and health. Unison's Duty of Care Handbook provides a useful accompaniment to the HPC's guidance and standards, and assists in maintaining good practice across the health and social care setting. ”

**Marc Seale**, chief executive and registrar, Health Professions Council



# Foreword



By Dave Prentis

The Duty of care handbook is intended to assist all those seeking guidance on how best to question and challenge unsafe practice in health and social care settings. Its broad scope means that it is applicable to all occupations across the public, private and voluntary sectors, making it relevant for all those who have concerns and wish to find an effective and responsible way of voicing them.

In recent years, there have been high-profile cases which demonstrate how pressures on staff and services can lead to failures in the duty of care – including the report into the tragic death of baby Peter as well as the Francis Report which revealed failings in care standards at Mid Staffordshire NHS Foundation Trust.

Both of these events have changed the landscape of how we look at the duty of care. They have reminded us of the vital importance of raising concerns and acting on them before it is too late, and of developing a workplace culture which enables staff to have the confidence they need to speak out.

There is clear evidence, including recent research conducted by Aston University, which shows that high levels of staff engagement, where staff are encouraged to contribute to decisions that affect them in the workplace, have a positive impact on financial management, health and well-being, quality of service and patient satisfaction.

This handbook aims to empower UNISON members working in health and social care to have a positive influence and be the guardians of safe, effective and high-quality services.

A handwritten signature in black ink that reads "Dave Prentis". The signature is written in a cursive, flowing style.

**Dave Prentis**

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# Introduction

Health and social care staff across the UK are being confronted with changes to services, vacancy freezes, increasing workloads and reductions in staffing and budgets. Occupational boundaries and the way services are being delivered are also changing. With all these pressures on health and social care services there has never been a more important time to ensure that the services you provide are effective and safe.

As a health or social care worker you owe a duty of care to your patients/service users, your colleagues, your employer, yourself and the public interest.

When there is pressure on staff or services it can impact on your duty of care. For example, if there are excessive workloads, changes to services, inappropriate delegation of tasks or poor health and safety practice.

This handbook is intended to assist good practice and improve services by giving guidance on how to tackle concerns about unsafe practice effectively and positively, and in partnership with employers. It will also help you to influence plans to change services or staff roles and enable UNISON members to be guardians of safe, effective services.

# 2

## The duty of care

‘Duty of care’ is a phrase used to describe the obligations implicit in your role as a health or social care worker. As a health or social care worker you owe a duty of care to your patients/ service users, your colleagues, your employer, yourself and the public interest. Everyone has a duty of care – it is not something that you can opt out of.

The duty of care applies to all staff of all occupations and levels. It applies to those working part time or full time, those in agency or temporary roles as well as students and volunteers.

You have a duty of care, whether you are a registered professional or non-registered. It applies to everyone, from nurses to porters, cleaners to receptionists, paramedics to therapists and technicians to social workers.

The duty of care to a patient or service user exists from the moment they are accepted for treatment or a task is accepted and they begin to receive services. This may be, for example, on admission to a ward, acceptance onto a caseload or once registered at an accident and emergency department. You have a duty of care to all patients or service users even if you are not directly responsible for their care.

All health and social care organisations, whether they are public, private or voluntary organisations, also have a duty of care. Their duty of care is to provide a comprehensive service to citizens and to demonstrate that, within the available resources, the appropriate priorities are chosen. They must also ensure that those people who are providing care are able to do so safely.

Just because an employee or employer cannot do everything that they believe needs to be done, does not mean they have breached their duty of care. There are not limitless resources available, therefore the obligation of an employee and employer is to ensure that what is actually done is done safely and in an appropriate and timely manner. They should also make it clear what cannot be done.



## Your duty of care

Your duty of care means that you must aim to provide high quality care to the best of your ability and say if there are any reasons why you may be unable to do so.

You must adhere to a standard of reasonable care and you are expected to:

- keep your knowledge and skills up to date
- provide a service of no less a quality than that to be expected based on the skills, responsibilities, and range of activities within your particular trade or profession
- be in a position to know what must be done to ensure that the service is provided safely
- keep accurate and contemporaneous records of your work
- not delegate work, or accept delegated work, unless it is clear that the person to whom the work is delegated is competent to carry out the work concerned in a safe and appropriately skilled manner
- protect confidential information except where the wider duty of care or the public interest might justify disclosure

In addition to these expectations, all employees have obligations and rights arising from their contract of employment. These may be found in various documents. For example:

- the statement of terms and conditions of employment which must include details of the salary paid, holiday entitlement, and so on
- other documents which are drawn to the attention of the employee – such as disciplinary procedures, job descriptions, clinical protocols and standards, work rules (on everything from parking to health and safety)
- statutory terms which are assumed to apply to all contracts (eg health and safety legislation, anti-discrimination

legislation, unfair dismissal and redundancy rights, the right to 'blow the whistle')

All contracts of employment also include 'implied duties'. These exist whether or not they are actually written down as part of the contract.

They include an obligation for the employee to work in accordance with lawful orders, co-operate with their employer, serve the employer faithfully and honestly and exercise skill and care in the performance of their work.

In return, the employer is obliged to pay agreed wages for duties performed or which the employee is ready to perform, provide a safe working environment, act in good faith and behave reasonably towards the employee.

It is the responsibility of employers to provide all staff with clear roles and responsibilities, along with the appropriate training.

As a practitioner you should not be asked to perform any task which is beyond your level of competence. If you are being asked to take on tasks which you are not properly equipped or trained to do then you should decline to do the task and explain why. If you are under pressure and worried about what will happen if you decline to do a task then you should seek advice from your local trade union rep.

The duties and principles outlined above relate to all staff. However, there are certain groups of staff such as registered professionals, members of professional associations, managers, students and trade union representatives who have some unique or additional rights and responsibilities in terms of their duty of care. These are summarised overleaf.

### 3.1 Registered professionals

Certain health and social care professionals must be registered in order to practice their profession and use a professional title such as 'occupational therapist' or 'paramedic', for example. These individuals must register with a regulator who is set up to protect the public (see full list below).

Each regulator keeps a register of individuals who are expected to meet and maintain certain standards of competence and conduct. They can also remove individuals from the register if they do not meet these standards.

If you are a registered professional, in addition to your duty of care as a health or social care worker, you must also keep to the various standards of performance, conduct, competency and ethics which are outlined by your professional registration body. In general terms, these standards are referred to as a Code of Professional Conduct. Every registrant must read these standards, and agree to keep to them, even if they are not practising.

A breach of these standards by an individual carries the risk of suspension or removal from the professional register. Removal from the register makes it unlawful for you to practise in your registered profession, and unlawful for any employer to employ you in that role.

It is reasonable to assume that any Code of Professional Conduct issued by a statutory regulatory body is implicit within the contract of employment in the same way that the duty of care is. Therefore any instruction by an employer which requires a registered professional to breach their Code of Professional Conduct should be regarded as an unreasonable one and should be questioned and challenged. In such

circumstances, the practitioner's obligations to their Code take precedence over their obligation to obey a conflicting instruction. Therefore practitioners can use their Code of Professional Conduct as a positive tool enabling them to advocate the interests of their patients or service users.

The regulators of health and social care professions in the UK include:

#### Health

**Nursing and Midwifery Council (UK):**  
nmc-uk.org

Useful documents include:

- The code: standards of conduct, performance and ethics for nurses and midwives
- The code in practice
- Raising and escalating concerns: guidance for nurses and midwives

Additional UNISON guidance which may be helpful includes:

- Speaking up, speaking out – guidance from UNISON nursing and midwifery sector

**General Pharmaceutical Council (England, Scotland and Wales):**  
pharmacyregulation.org

Useful documents include:

- Standards of conduct, ethics and performance

**Pharmaceutical Society of Northern Ireland (Northern Ireland):** psni.org.uk

Useful documents include:

- Code of ethics

**Other health regulators include:**

General Chiropractic Council, General Dental Council, General Medical Council, General Optical Council and General Osteopathic Council.

## Health and social care

### Health Professions Council (UK):

[hpc-uk.org](http://hpc-uk.org)

Currently the HPC regulates fifteen professions including: arts therapists, biomedical scientists, chiropodists/podiatrists, clinical scientists, dietitians, hearing aid dispensers, occupational therapists, operating department practitioners, orthoptists, paramedics, physiotherapists, practitioner psychologists, prosthetists/orthotists, radiographers, and speech and language therapists.

From 2012, the HPC will be known as the Health and Care Professions Council and is expected to regulate social workers in England.

Useful documents include:

- Standards of conduct, performance and ethics
- Standards of education and training
- Your guide to our standards for continuing professional development
- Raising and escalating concerns in the workplace

## Social care

### General Social Care Council (England):

[gsc.org.uk](http://gsc.org.uk) (functions due to transfer to the Health and Care Professions Council from 2012.)

### Scottish Social Services Council:

[sssc.org.uk](http://sssc.org.uk)

### Care Council for Wales:

[ccwales.org.uk](http://ccwales.org.uk)

### Northern Ireland Social Care Council:

[nisc.org.uk](http://nisc.org.uk)

Useful documents include:

- Codes of practice for social care workers and employers of social care workers

**Note:** The codes of practice for social care workers and employers of social care workers apply across all four UK social care regulators. However, the functions of the General Social Care Council are due to be transferred to Health Professions Council from 2012, which will see the introduction of a new code and standards for social care registrants in England.

Additional UNISON guidance drafted by the Social Work Issues Group (SWIG), a subgroup of the UNISON Scotland Local Government Committee is available from [unison-scotland.org.uk/socialwork](http://unison-scotland.org.uk/socialwork).

This includes:

- Helping people change their lives: a social work manifesto for UNISON and BASW members in Scotland
- Keeping safe in the workplace: a guide for social work practitioners
- Supervision and workload management for social work: a negotiating resource

## Council for Healthcare Regulatory Excellence (CHRE)

The Council for Healthcare Regulatory Excellence (soon to be known as the Professional Standards Authority for Health and Social Care) is an independent body which oversees the health professional regulators in the UK and in doing so promotes the health, safety and well-being of patients and the public. It has powers to carry out regular performance reviews of each regulator and provides policy advice to the Secretary of State and health ministers in Scotland, Wales and Northern Ireland on the regulation of health professionals. For more information go to: [chre.org.uk](http://chre.org.uk).

## Regulation of health and social care support staff

Over the last few years there has been an increasing push to regulate health and social care support staff

and assistant practitioners that work alongside registered professionals. For example, health care assistants, occupational therapy and other allied health professional support workers, healthcare scientists, pathology assistants and social care support staff. Many of these unregulated support staff have seen significant changes to their role over time and many are now undertaking work which was previously done by registered professionals.

New mechanisms are being put in place which will regulate these staff. For example in Scotland, an employer-led model of regulation for health care assistants has been implemented: (see [healthworkerstandards.scot.nhs.uk](http://healthworkerstandards.scot.nhs.uk) for the code of conduct for healthcare support workers in Scotland) and the Scottish Social Services Council is implementing regulation of social services support staff.

The full scope of such changes is not yet clear. UNISON will continue to campaign to ensure that any new regulatory procedures that are put in place are robust and provide staff with the training and support to maintain high standards of care. For those support staff who find themselves subject to regulation, the standards and codes of practice they are expected to meet as a regulated practitioner will be an important benchmark for assessing any threats to the duty of care.

### 3.2 Members of professional bodies or associations

UNISON has relationships with several bodies which advocate and promote certain health and social care professions. For example, the British Association of Occupational Therapists (BAOT), British Association of Prosthetists and

Orthotists (BAPO), Association of Pharmacy Technicians (APTUK) and College of Operating Department Practitioners (CODP).

These bodies provide professional advice to their members, in addition to the trade union advice and support that UNISON offers. They set out the recommended standards of ethics, conduct and practice for the members of their profession. In many cases, these recommended standards will also apply to non-registered staff such as support workers and assistants working in the profession.

Although they are not legally enforceable like the Code of Professional Conduct set by registration bodies, any breach of the standards outlined by your professional body is a threat to the duty of care. Therefore these standards are a useful means to highlight and raise any concerns you have around your ability to practise safely and effectively.

#### **British Association of Occupational Therapists (BAOT):** [baot.org.uk](http://baot.org.uk)

Useful documents include:

- Code of ethics and professional conduct for occupational therapists
- Professional standards for occupational therapy practice

#### **British Association of Prosthetists and Orthotists (BAPO):** [bapo.org](http://bapo.org)

Useful documents include:

- The ethical code and professional conduct for prosthetists and orthotists

#### **Association of Pharmacy Technicians (APTUK):** [aptuk.org](http://aptuk.org)

Useful documents include:

- General Pharmaceutical Council standards of conduct, ethics and performance

### College of Operating Department Practitioners (CODP): [codp.org.uk](http://codp.org.uk)

Useful documents include:

- The scope of practice for registered operating department practitioners

### 3.3 Managers

Managers have the same duties as all employees; to follow lawful and reasonable instructions and have a duty of care towards those they manage, to patients/service users and the public. Faced with potential or actual problems, a manager is expected to enable staff to voice their concerns and identify why staff (or others) may believe a situation is potentially unsafe.

They must consider the priorities and protocols set by the employer and the resources and equipment that are available and determine what can be done safely. This may involve considering whether things could be done differently, but could also involve deciding certain tasks or roles will not be done until they can be done safely.

If the manager is not qualified in the occupation in question, they should take advice from an appropriately trained person who is. And they should ensure that whatever steps are taken do not compromise the professional judgement of their staff or themselves.

And remember, if the manager is a member of a professional register, they must adhere to their Code of Professional Conduct, even if they are not practising.

If a potentially unsafe situation exists then they must inform their own manager in writing, explain why, and seek advice. They will then need to ensure that the issues they have raised receive an early and appropriate response, which should be confirmed in writing.

### 3.4 Students and trainees

Students and trainees also have a duty of care; however the standard is different to that of a qualified practitioner. Trainees and students cannot be professionally accountable in the same way that fully trained practitioners are. They are not expected to reach the standards of a fully qualified practitioner and should never be asked to work except when they have been adequately prepared and are supervised by an appropriately qualified member of staff.

Should a student or trainee be asked to undertake tasks which they believe they are not qualified to do, then they must make that clear, initially to their supervisor, and if necessary to their tutor or a more senior manager. Inappropriate delegation (whether by act or omission) is a very serious matter. The supervisor (and training establishment) has a duty to ensure the student or trainee does not undertake tasks or responsibilities they are not qualified to.

### 3.5 Trade union representatives

Trade union representatives have a number of legal rights and policies to draw on in insisting they be properly consulted on the issues relating to duty of care. They are also able work in partnership with the employer to resolve issues of concern.

These rights include the right to access information for collective bargaining purposes, to be consulted, in good time, on any potential redundancies or transfers of staff or services, and access to paid time off, training and facilities for their trade union duties.

There is also a right for trade union members to elect health and safety representatives to inspect and be consulted on health and safety matters

and to elect learning representatives to influence training and learning in the workplace. No representatives should be victimised or treated less favourably because of their trade union role.

Also, trade union members have a right to reasonable time off (without pay unless agreed with management) to attend trade union meetings.

These are the basic rights available – you should check your local or country-wide recognition and facilities agreements to see what other rights may apply or could be agreed in the future.

Remember, if a trade union representative is also on a professional register then they must adhere to their Code of Professional Conduct whilst undertaking their trade union duties, for example, by maintaining patient/service user confidentiality or by acting on 'off the record' information in order to prevent harm to others.

## When your employer's instructions conflict with your duty of care

There may be times when the duty of care may require an individual or group of staff to question or challenge their employer's instructions. For example, when there is a conflict between what their employer expects them to do and what they believe is in the best interests of patients/service users, the health of colleagues or themselves, or the wider public interest.

Your obligation to work in accordance with the lawful contractual instructions of your employer may be challenged in certain circumstances.

For instance:

- where an instruction is unlawful – for example requiring individuals to drive vehicles or operate machinery they are not qualified to drive or operate
- where an instruction is clearly unsafe – either in breach of a statutory requirement or a serious health and safety risk
- where an instruction conflicts with statutory rights and obligations – for example insisting staff breach anti-discrimination legislation or the Working Time Regulations
- where an instruction is outside the employer's contractual authority – for example imposing obviously and intolerably unfair requirements on employees
- where there is insufficiently direct instruction – for example where there are conflicting instructions from different managers
- where an instruction conflicts with implied contractual duties – especially the individual's duty of care or their Code of Professional Conduct

Before any changes are made to working arrangements, services or resources, employers and employees must ensure that all the duty of care requirements can be met. If you become worried that a situation could lead to your duty of care being compromised then you should

raise these concerns to ensure your duty of care and the public interest is safeguarded.

Some examples of situations where the expectations of your employer may conflict with your duty of care might include:

- being expected to undertake an excessive or unsafe workload, for example being expected to take on too many cases or cope with inadequate ratios of staff
- being asked to implement questionable delegation of tasks or roles, for example being asked to take on tasks you are not trained for or to delegate tasks to someone else who is not properly trained
- being told to follow potentially unsafe instructions, for example, being asked to undertake a task with inadequate or faulty equipment
- being expected to work in an environment which is unsafe for staff or patients/service users, for example poor hygiene leading to hospital acquired infections
- being harassed at work by other staff, managers or members of the public or suffering from bullying or stress
- working in a workplace where a climate of fear prevents proper concerns about patient/service user care or staff safety being raised
- being asked to collude in inappropriate allocation or reduction of resources not in the best interests of patients/service users

There are a series of case studies at the back of this handbook which show how different individuals or groups of staff may find themselves in a situation where their duty of care is compromised.

These case studies aim to help you to understand how workplace problems can affect your duty of care and how best to raise concerns and find solutions.



# 5

## Statutory rights and duties

Alongside your contracted terms and conditions of employment there are a number of statutory rights and duties that may help you if you are concerned that your duty of care conflicts with management instructions. These rights and duties are specified in legislation. Some important examples are included below:

### 5.1 The public interest – ‘whistleblowing’

Under the Public Interest Disclosure Act 1998 workers have a right to ‘blow the whistle’ if management instructions are conflicting with their duty to act in the public interest. Examples might include where an individual believes clinical practices or equipment are dangerously unsafe, or where serious misuse of funds or resources (e.g. fraud or waste) is discovered. Every employer should have a whistleblowing procedure in place to facilitate the disclosure of this kind of sensitive information.

Whistleblowing is a serious issue. Therefore it is essential that any member who is considering whistleblowing seeks advice from UNISON first. The provisions in the Public Interest Disclosure Act are complicated, so it is absolutely vital to always seek advice from the union (and involve the local branch and regional office) before making any disclosure, to make sure that the member is protected from any action by the employer afterwards.

Someone making such a disclosure must do so in good faith (even if later it turns out to be untrue) and must believe that at least one of the following tests is met:

- that a criminal offence has been or is likely to be committed
- that someone is failing, or will fail, to comply with legal obligations
- that a miscarriage of justice will occur or has occurred

- that there is a health and safety risk or there is a risk of damage to the environment, or
- that information about these issues has been, or is likely to be, deliberately concealed

#### More info:

- Public concern at work: [pcaw.co.uk](http://pcaw.co.uk)
- Speak up for a healthy NHS – guide to whistleblowing: [socialpartnershipforum.org](http://socialpartnershipforum.org)
- NHS terms and conditions of service handbook (UK): [dh.gov.uk](http://dh.gov.uk) (Section 21 outlines the right staff have to raise concerns in the public interest)
- The NHS constitution (England only) [dh.gov.uk](http://dh.gov.uk) (see section 5.7)
- Social Care Institute for Excellence guidance on raising concerns and whistleblowing: [scie-socialcareonline.co.uk](http://scie-socialcareonline.co.uk)

### 5.2 Equality legislation

The Equality Act 2010 outlines anti-discrimination legislation covering six main equality strands: age, disability, gender, race, religion and belief and sexual orientation.

As part of the Equality Act in England, Scotland and Wales, any public authority or organisation which carries out a public function, is legally obliged to eliminate discrimination for service users and staff by adhering to the public sector equality duty. The duty covers the six strands outlined above as well as gender reassignment, pregnancy and maternity. Employers must have due regard to the need to eliminate unlawful discrimination, harassment and victimisation and foster good relations between different groups.

Discrimination is a breach of the duty of care and must be challenged.



**More info:**

UNISON equality guidance:  
[unison.org.uk/equality](http://unison.org.uk/equality).

This includes guidance for branches on how to tackle employers who ignore their public sector equality duties and how to ensure employers are fulfilling their obligation to undertake a full equality impact assessment on a proposed course of action (including restructuring, cuts and redundancies).

Equality and Human Rights Commission:  
[equalityhumanrights.com](http://equalityhumanrights.com).

The Equality and Human Rights Commission provides guidance on the Equality Act and has published statutory codes of practice on areas such as employment, pay and services.

**5.3 Health and safety legislation**

The basis of UK health and safety law is the Health and Safety at Work Act 1974. The Act (and the various regulations and approved codes of practice made under it) put a duty on employers to ensure the safety, health and welfare at work of their employees and to ensure their activities do not endanger others.

The Management of Health and Safety at Work Regulations 1999 (which are based on European law) clearly set out what employers are required to do to manage health and safety under the Act.

The main requirement on employers is to carry out risk assessments, ie a careful examination of what, in a workplace, could cause harm to people, so that measures can be identified that eliminate or significantly reduce the risk of harm.

Health and safety and the duty of care are discussed further in section 6.

**More info:**

The Health and Safety Executive (HSE) is responsible for health and safety policy and the enforcement of health and safety law. Detailed information and guidance on the legislation is available from the HSE website: [hse.gov.uk](http://hse.gov.uk).

UNISON health and safety guidance is available at: [unison.org.uk/safety](http://unison.org.uk/safety).

Some useful guidance that may relate to your duty of care include:

- Stress at work:  
a guide for UNISON safety reps
- Tackling bullying at work:  
UNISON guidelines
- It's not part of the job:  
a health and safety guide on tackling violence at work
- Working alone:  
a health and safety guide on lone working for safety representatives
- Making us better:  
sickness absence agreements – a guide for branches and safety representatives
- Administration of medicine:  
UNISON guide for health and safety representatives
- Managing medicines and providing medical support in schools and early years settings – UNISON branch advice (published by UNISON, available at: [unison.org.uk/acrobat/19084.pdf](http://unison.org.uk/acrobat/19084.pdf))

TUC health and safety guidance is available at: [worksmart.org.uk/health](http://worksmart.org.uk/health).

**5.4 Working Time Regulations**

The Working Time Regulations 1998 set out rights and obligations relating to working time and rest periods.

**More info:**

UNISON Working Time Regulations guidance [unison.org.uk/bargaining](http://unison.org.uk/bargaining)

### 5.5 Regulation of health and social care providers

Organisations that provide health and social care services, including the NHS, local authorities, private companies and voluntary organisations are all required to be regulated.

In the UK, this regulation is undertaken by independent regulators who monitor and assess services and take action if there are concerns about the safety or quality of care. These regulators carry out inspections and spot checks and also seek feedback from staff and the public to help them improve care services. They also publish useful guidance on how to manage risks as well as detailed inspection reports, assessments and surveys which may provide useful information on the performance of your organisation.

The UK regulators of health and social care services are:

**Cymru/Wales:**

Care and Social Services Inspectorate Wales (CSSIW)

Healthcare Inspectorate Wales (HIW)

**England:**

Care Quality Commission (CQC)

**Northern Ireland:**

The Regulation and Quality Improvement Authority (RQIA)

**Scotland:**

Healthcare Improvement Scotland (HIS)

Social Care and Social Work

Improvement Scotland (SCSWIS)

### 5.6 Scrutiny bodies

Local decisions regarding health and social care services are overseen by independent scrutiny bodies which gather information on public need and gauge the opinion of service users and the public. These are sometimes known as scrutiny committees or advisory councils and are usually

hosted by health boards or local authorities. An important part of their role is to promote the inclusion of patients, communities and other stakeholders in the planning and delivery of health and social care services, including scrutinising any proposals to change services.

There are also local patient/service user involvement networks which provide a mechanism for patients and clients to be involved in the scrutiny and oversight of services.

You may want to get in touch with your local scrutiny bodies if you are concerned that proposed changes to health or social care services could have an impact on the duty of care.

### 5.7 The NHS constitution (England only)

The NHS constitution applies to NHS staff in England only. It sets out the rights, pledges, duties and responsibilities for patients, the public and staff.

The constitution draws together many of the legal rights outlined above as well as others derived from legal obligations imposed on NHS bodies and other healthcare providers. For example, the constitution reiterates the right for staff to be treated fairly, equally and in a way that is free from discrimination; the right to healthy and safe working conditions in an environment free from harassment, bullying or violence and a pledge to support all staff in raising concerns about safety, malpractice or wrong doing at work. The constitution is accompanied by a handbook which provides guidance on these rights.

More information on the NHS constitution can be found on the Department of Health website at [dh.gov.uk](http://dh.gov.uk).

## Health and well being at work

Health and safety at work is crucial to maintaining the duty of care and should be supported by effective policies. For example, risk assessment procedures, including details of how to report an incident or accident as well as safety guidelines on areas such as manual handling, lone working, using and transporting equipment, handling hazardous substances and what to do in the event of a fire or other emergency.

If staff are not well-informed about these policies, or if the policies are not effectively implemented then this can affect the duty of care. Local health and safety representatives have an important role in improving the way these policies are implemented and to make sure staff are well trained and well informed on health and safety.

Employers are also encouraged to implement policies which enable employees to achieve a healthy work-life balance. For example, by introducing procedures which promote staff welfare such as bullying and harassment policies, workplace health and safety guidelines, anti-discrimination policies and policies seeking to help staff to balance work and family responsibilities.

### More info:

The NHS has a declared commitment to be an employer of excellence and has produced a framework document called *Improving working lives in the NHS* to support the development of good human resource policies that will improve the working lives of staff and lead to improved outcomes for service users.

It will help organisations to meet their obligations to provide fair treatment, flexible working opportunities and a safe and healthy workplace. The framework, developed by the NHS staff council, can be found at [nhsemployers.org](http://nhsemployers.org).

In England, trade unions in partnership with NHS employers have produced documents such as *The essential NHS reference guide to health, safety and welfare at work* and *Occupational health and safety standards*. These and other documents can be found at <http://wellbeing.nhsemployers.org>.

# 7

## Using workplace protocols to support the duty of care

There are a number of workplace protocols that will be in place to support your duty of care. Some of these will be overarching guidelines that apply throughout your country or throughout the UK, for example, health and safety guidelines or procedures for the administration of medicines.

Others will be policies that are specific to your workplace, for example, infection control procedures, caseload management guidelines, standard operating procedures, or similar protocols.

This section of the handbook looks at how workplace protocols may help you to demonstrate and resolve any concerns you may have regarding the duty of care.

### 7.1 Best practice guidelines

Each workplace should have agreed best practice guidelines in place regarding how to undertake certain tasks, for example operating machinery or administering treatment or medication. These guidelines should enable staff to work safely and effectively.

If staff are forced to breach these guidelines because of workload problems or pressures then this is a threat to the duty of care. Likewise, if sufficient guidance is not in place, this also puts the duty of care in danger.

Trade union members and stewards can work together with management to develop, monitor and review these guidelines. Often staff have good ideas about how guidelines can be improved.

Also, talk to your local learning rep about promoting training or learning opportunities which may help staff develop their skills or improve their practice.

### 7.2 Quality standards

Quality standards have an important role to play in ensuring that staff have the ability to uphold their duty of care.

To maintain the duty of care, there should be:

- clear lines of responsibility and accountability for the quality of care
- clear policies to manage risk and published procedures for each staff group to identify and correct poor performance
- a comprehensive set of quality standards and systems to improve quality
- genuine team working in which concerns and suggestions can be raised openly by any staff members

#### More info:

*The essence of care standards* (England), published by the Department of Health: [dh.gov.uk](http://dh.gov.uk).

### 7.3 Training and supervision

Every employer should have processes in place to ensure that staff have the appropriate skills to do their job and these skills are steadily enhanced through training and professional development.

This should include providing access to competent professional supervision and appraisals carried out by trained staff. It is also good practice for an employer to set aside resources and protected time for training and development, including for part-time and shift workers.

Staff who are supervising others or being supervised should fully engage in the process and be able to access guidance if they identify any difficulties or concerns.

#### More info:

Staff employed on NHS terms and conditions have a contractual right to

learning and development under the Agenda for Change knowledge and skills framework: [nhsemployers.org/PayAndContracts/AgendaForChange/KSF](http://nhsemployers.org/PayAndContracts/AgendaForChange/KSF).

## 7.4 Workload management

Workload management procedures should be in place in order to ensure safe and effective staffing levels and to identify any work which cannot be safely allocated.

It is good practice for employers to have capacity and workload management policies in place. Such policies should be agreed with the input of staff and unions. A policy may include guidelines on the proportion of time that staff should spend on specific duties or face to face client contact, and workload weighting tools to assess the level of demand on team members according to the risk, time or complexity of the cases or duties they are undertaking. It may also include guidelines on team-working, allocating and prioritising tasks and accessing training and supervision.

Employers are expected to behave reasonably toward their employees, to not bully, harass or discriminate and to provide a safe working environment. Therefore an employer would be in breach of their duty of care to both staff and patients if they imposed unreasonable and unsafe workloads. Staff have a duty of care to alert managers if they believe their workload is putting at risk the safety of patients/ service users or their colleagues.

## 7.5 Customer complaints

All health and social care organisations will have a procedure in place to elicit and monitor customer complaints. Complaints can be an important way

of identifying problems with the quality and delivery of care.

Formal complaints will provide valuable feedback and evidence to your managers and employers regarding failures in the service and give them important information to help improve services. There may be times when it is helpful to remind a frustrated service user or relative about their right to make a complaint. This means that the problem is formally noted. It can also help demonstrate that a particular concern is shared not just by staff, but by service users as well.

Also, it is good practice for managers to share complaint information with staff in order to help address concerns and improve services.

## 7.6 Risk registers

Health and social care workplaces will have risk registers in place to record risks and provide a formal note of the action taken to manage these risks. Risk registers should contain information on the existing procedures or controls that are in place to mitigate risks and what action should be taken if a risk arises.

Risk registers are a useful place to record any incidents or near misses which may demonstrate a threat to your duty of care, as well as any serious untoward incidents. Work together with your colleagues and local health and safety representative to keep comprehensive records of any accidents, risks (or potential risks) to both staff and the public.

If there isn't a formal register in place in your department and you have concerns around your duty of care, then you should aim to set up your own informal register to record risks and evidence to support your concerns.

### 7.7 Escalation plans

Some workplaces have escalation plans in place to deal with potential problems or major incidents. An escalation plan is a set of procedures which are implemented when unexpected strain or an increased level of stress is placed upon services, for example when there is an unexpected emergency, a major event or incident, or when a waiting list reaches an unacceptable level. Once a certain threshold is reached – for example, when a case load reaches a certain amount – then agreed strategies will kick-in to stop the problem escalating to a crisis. The strategies could include things like restricting admissions, withdrawing certain services, bringing in extra staff, etc.

You may wish to check that escalation plans are being established and monitored in your workplace – and that they are agreed and implemented in consultation with local trade union stewards and health and safety representatives.

### 7.8 Measuring unmet need

Unmet need, in health care or social services, is about estimating how many people with particular health or social care needs there are in a community and whether there are any gaps or deficiencies in service provision. Often there are formal national or local mechanisms in place, such as surveys or population need assessments, to try to gauge unmet need. Unmet need may be caused by a lack of services or resources, or a patient/service user not being aware of what services are available to them.

Measuring unmet need is a useful way to demonstrate the link between

your duty of care and the delivery of effective services. If you are able to demonstrate there is ‘unmet need’ within your service, this could be an important tool to encourage your employer to make positive improvements to staffing levels or workplace practices.

For example, you and your colleagues could agree to formally note down any instances where patients or service users needed care but did not receive it or they had to forgo certain treatments or services because they were unavailable or not easily accessible. Clinicians could also note down any instances where, in their professional opinion, there may have been barriers to providing the optimum or desirable level of care.

### 7.9 Positive risk taking and structured judgement

Sometimes staff or services can become averse to taking any sort of risks with people in their care. This can be detrimental to service users and trap them in dependency, limit their autonomy, or at worse make them institutionalised. Positive risk taking is an approach which is popular in social care and mental health services. It allows service users to take decisions about their own lives, even if those decisions could result in risks or mistakes. It aims to find a balance between allowing people the choice to take risks and feel in charge of their own lives – as well as enabling the health or social care practitioner to help manage or minimise these risks.

For those practitioners who are involved in the assessment or management of positive risk taking this needs to be balanced against the duty of care.

If the service user was allowed to take a risk which resulted in harm – then

the practitioner would need to be able to defend their decision by demonstrating that they had undertaken a thorough assessment, all reasonable steps had been taken to avoid harm, decisions had been recorded and procedures carefully followed.

# 8

## Maintaining and supporting the duty of care

Every individual has a responsibility to provide safe, quality care and is accountable for the services they provide. Therefore, it is vital that all health and social care staff feel empowered to take action to support the duty of care.

Here are some strategies to help maintain the duty of care:

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### **Develop a good knowledge of the policies and standards you are expected to uphold**

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All staff should aim to uphold the standards expected by their employer and professional regulator (where appropriate) and effectively engage with professional supervision and promote good practice and conduct.

Staff should follow workplace policies and procedures and alert their manager or employer to any risks, pressures, shortfalls or concerns which could affect the safety or quality of care.

Any instructions to undertake tasks that are potentially unsafe should be drawn to the attention of an appropriate manager – and staff and managers should work together to find appropriate solutions.

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### **Don't take on work you are not trained or equipped to do**

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If an individual does not have the necessary experience or preparation to carry out a task safely, or if they are uncertain about the correct course of action to take in their work, then they should make that clear to their line manager or senior professional and seek guidance and assistance.

In turn, the manager or supervising professional should take responsibility for checking that tasks are only delegated to, or undertaken by, competent, well-equipped individuals.

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### **Monitor any problems which may impact on your duty of care**

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In order to protect yourself and your services you need to raise any concerns about your duty of care before any accidents or incidents occur. It is important to monitor the situation on an ongoing basis and note down any incidents or concerns.

Be prepared to express your concerns if you believe the situation in your workplace is putting patient/service user or staff safety at risk.

You may not be the only one worried, so talk to a colleague to see if they share your concern. However if they don't, this doesn't mean you are wrong. You must ultimately trust your own judgement. Remember to listen to your gut instinct.

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### **Keep accurate records**

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Keep records of any concerns you have and the impact of these on patient/service user care, or on staff. Note these in the formal risk registers or case records in your workplace. If there are no registers like this in your workplace or you are unable to include your information on them, then you may want to keep your own informal records.

Remember all clinical records must be in writing, be legible, dated and signed; they should only be amended by crossing



out. They must be concise, relevant, accurate and factual. And remember, unless you can justify it in the public interest, do not disclose personal confidential information without the consent of the patient or service user.

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**Don't wait until it is too late before you take action**

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A failure in the duty of care could result in an individual being subject to a disciplinary or misconduct procedure. Although the action or conduct of the individual would be judged using the *minimum standard* reasonably expected of an individual working in that role, they would not be able to argue that the shortcomings occurred because of their inexperience, because they were following instructions or because of inadequate resources or work pressures. Nor can they argue that “the team” or other colleagues were at fault. Therefore it is essential to raise any concerns well ahead of time, to avoid any possible repercussions.

It must be emphasised that, whatever the duty of care the worker has to patients/service users and their employer, the employer still remains liable for the actions of their staff. This means they are responsible for what you do in the course of your employment, including where you make a mistake.

# 9

## Challenging unsafe practices – the steps to take

There are effective and responsible ways in which individual members of staff or staff groups can, and should, challenge unsafe clinical and employment practices. Wherever possible the concerns should be tackled informally and jointly with management.

Remember, the duty of care and the public interest are not issues you can opt out of. If an individual believes safe practice is at risk then they must highlight their concerns with the appropriate manager. If the situation is urgent then you should do this immediately.

If you need to formally raise concerns then these are the steps you should take:

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### Seek trade union support

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Individuals or groups of staff who are concerned about impacts on their duty of care should liaise with their local trade union steward or health and safety rep. You should ensure that at all stages the advice and support of your steward, UNISON branch and/or regional office is sought.

Where appropriate, staff who are also members of professional bodies (eg BAOT, APTUK, BAPO and CODP) may also wish to contact their professional body to clarify their concerns.

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### Find out who is affected

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Try to determine the scale of the problem and find out who else may be affected. Assess if the issue will be taken forward individually or whether it is possible to take it forward as a collective issue with a group of colleagues. If the issue is taken forward collectively, make sure everyone is clear that this will require all members of the group to be equally responsible and accountable.

Keep your colleagues informed of what is going on, eg via a staff meeting, a newsletter or a survey. Ask non-members if they would like to join the union.

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### Gather evidence

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Gather together evidence which demonstrates your concerns.

For example:

- details of the standards staff are expected to meet (eg waiting times) and how and why they cannot meet them
- protocols, policies or service frameworks that risk being breached (how, when, why and who by?)
- equipment and facilities that are inadequate, unsafe, broken or not available
- staff shortages or inappropriate delegation – setting out why this is the case and the consequences
- the results of risk assessments
- staff surveys (further guidance on conducting a survey is available on the duty of care pages on the UNISON website: [unison.org.uk](http://unison.org.uk))

Remember, any concerns about the duty of care need to be legitimate – it cannot simply be that you are unhappy with the situation, it must be that the situation is (or may become) unsafe.

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### Put your concerns in writing

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Write to the relevant manager. Explain the concerns simply and clearly and where possible use supporting evidence and examples. Refer to appropriate protocols, codes of professional practice, employer policies and clinical evidence. Remember to highlight the risks to patients/service users as well as those to staff.

If you need help drafting a letter, some sample letters are available

on the 'Duty of Care' pages on the UNISON website: [www.unison.org.uk](http://www.unison.org.uk).

In the letter, state clearly what outcome staff are seeking, i.e. confirmation of what tasks can be done safely, suspension of certain tasks, increased staff to share the workload, etc.

Insist that any instruction to undertake duties which are believed to be unsafe is put in writing by management, in response to your letter. Bear in mind that even where a manager says that they will "take responsibility" for any harm that may result from your acts or omissions as a result of your concerns, this is meaningless. You (and they) cannot delegate your duty of care.

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### **Confirm what action will be taken**

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When the manager or employer responds to your letter, make sure that the process and timescale of any discussion is clear and in writing. If they propose solutions, ask for these in writing. If they say there is no solution and you have to carry on regardless, ask for confirmation of this in writing.

If these steps do not result in your concerns being addressed then you should seek advice from your local UNISON branch or regional office.

In some cases, your branch or regional office may be able to support you in seeking more formal means to address the problem, for example using the grievance procedure, building a collective response and, if necessary, a public campaign. In these cases, it may help to flag up your concerns with other relevant stakeholders such as non-executive directors; patient/service user groups, community groups, charities, local health and social care scrutiny bodies, local councillors and your local MP.

# 10

## The duty of care as an organising tool

Trade unions and their members play an important role as guardians of safe and effective services. Organised workplaces with a high density of membership give UNISON greater influence with local management and employers. It also means that members have more confidence in their own ability to change things.

Health and social care staff care deeply about the services they provide. They want to ensure that the duty of care is met and they are able to deliver high quality and effective services. Therefore it is important that they are UNISON members so that they can actively engage in the issues outlined in this handbook. By joining UNISON, they have a stronger voice in the workplace as well as the support of the union when their duty of care is under pressure.

The duty of care is an important part of a branch's recruitment and organising strategy. It provides a valuable opportunity to meet and talk to members and non-members. Workplace representatives can provide a forum for staff to voice concerns by holding workplace meetings, developing communication networks or conducting surveys. And health and safety reps and learning reps have a vital role to play to ensure members have the support and skills they need to work effectively and safely.

Face-to-face contact has proven to be the most effective way to attract new members. This means that existing members share with others what they know and like about their union. There is no better representative than you. Remember, 'Nobody asked me!' is the single biggest reason people give for not having joined a trade union.

For more information and guidance on recruitment and organising in your workplace go to: [unison.org.uk/recruitment](https://unison.org.uk/recruitment).

## Case studies – workload and staffing

### Health care assistant making mistakes through staffing shortages

*A ward has been understaffed by one nurse and one health care assistant (HCA) for three weeks. The employer claims to have tried to get agency cover but staff believe they have not tried very hard because they are trying to save money. For the last three days there has been a further HCA missing due to sickness. The one remaining day shift HCA, Pam, tried her best but by the end of the first day was aware that even with help from the registered nurses, it was impossible to carry out even the minimum of necessary duties to a reasonable standard. She raised her concerns informally with the ward sister who assured her they were trying to get cover, but said that with support from the registered nurses, it should be possible to keep going for a few more days.*

*On the third day Pam makes a mistake. She gives a drink to a patient who was designated “Nil by Mouth” and due to be operated on later that day. Pam is warned she faces a serious investigation. She is very upset.*

In this case, the HCA should have found a way to put her concerns in writing so there was no doubt how serious the situation was. Pam’s steward could have assisted with drafting a short letter.

In turn, the ward sister, despite the pressures on her, should have acknowledged her responsibilities under the Nursing and Midwifery Code of Professional Conduct and have redoubled efforts to get immediate cover. She should have talked to the nurses and HCA regarding the pressures and risks they were facing and considered what immediate steps could be taken – for example the temporary transfer of staff from another ward, or even the closure of beds. She should have immediately

drawn her own manager’s attention to the concerns expressed.

Pam’s UNISON representative should have sought to establish how long the situation had been developing, what steps had been taken, and insisted on an audit of other wards, or even run a quick confidential survey to establish the scale of the problem.

Pam should have found the courage to raise her concerns formally if nothing happened when they were raised informally.

### Manager of an overstretched microbiology laboratory

*John is a head biomedical scientist in a microbiology laboratory. He is concerned that due to staff shortages and excessive use of locum staff, morale is falling and workloads are steadily growing to the point where they are close to being unsafe. Staff at all levels are privately complaining and he has great sympathy but he simply cannot keep any of the permanent staff he recruits because of low pay and excessive workloads.*

*The UNISON steward, Julia, representing biomedical scientists and other staff has been raising these issues, referring to their Code of Professional Conduct. Now she has given John a written ultimatum – find extra staff or reduce the workload or the coverage – and has provided a detailed breakdown of how the staff shortages are affecting safe practice.*

*The head biomedical scientist talks to his own manager. His manager says that whilst he sympathises, there is nothing that can be done in the short term.*

*John broadly accepts the points made in the letter from the steward. He is worried*

*that unless something is done, there will be an overtime ban and staff, unable to cope with the pressures, will go off sick, making things even worse.*

Doing nothing is not an option. John should sit down with the staff to look at whether there are any ways in which the work could be covered more safely. He should then draw up a list of options. Most obviously, the laboratory could temporarily withdraw its 24-hour cover except for minimal on-call. This would delay GP tests but not necessarily be life threatening.

If that doesn't have enough impact he could seek permission to increase the number of locum staff, since staff willing to work overtime are all working at least one shift extra a week already. If that doesn't work he will need to sit down with his manager and, if necessary in writing, identify what the options are that would ensure safe working, and spell out the risks if that is not done.

In the longer term, a serious recruitment and retention strategy should be put in place, linked to a strategic review of how laboratory services across the organisation and beyond are provided.

If the head biomedical scientist works like this, he and Julia, the steward, can be a powerful combination to gain additional resources.

### **Excessive workload for social worker**

*Laura, a social worker, is one of three based at a local community centre. For the last couple of years all three have complained they are understaffed. Until two years ago there were four social workers covering the centre and the number of service users on their caseload has increased by 15% since then.*

*One of the social workers leaves and her replacement is a part-timer working three days a week. The third social worker then goes on long term sick leave with stress. The service manager at the local authority manages to find a social work assistant but says there is no money to employ a qualified social worker to provide cover.*

*Laura is the last remaining social worker at the centre. She believes this is unsafe and seeks advice.*

Laura should set down in writing why she believes this is unsafe, in particular recording how the workload and service demands have changed, what the risks are from the current staffing, and identifying what changes need to be made to carry out work safely, for example suspending certain duties or gaining additional staff.

If possible, Laura should talk to her two colleagues, but irrespective of whether they are prepared to support her, she should put her concerns in writing, and send them to her manager or lead professional. She should also send a copy to her union representative (on a confidential basis at this stage). If Laura meets with her manager to discuss her concerns, she should ensure that her manager's verbal response is confirmed in writing. If the manager won't respond in writing then the member should confirm the manager's response in writing.

If no satisfactory response is received within a reasonable timescale, then she should seek advice from her union representative.

At this stage the UNISON steward may well realise this is not an isolated issue and is in fact a organisation-wide or locality-wide issue for social workers. In that case a meeting should be called, irrespective of which union they are in.

Management may well provide a temporary response and promise a better long term solution. Either way, it will be essential to confirm that what Laura is required to do, can be done safely, and if necessary less essential work must be suspended. An agreed written statement setting this out is essential.

### **Operating department practitioners and out of hours arrangements**

*A new out of hours arrangement is proposed for anaesthetic support for a new obstetric service. The proposal, as described to staff, requires the anaesthetic assistant for emergency theatres to also provide cover for the obstetric service. In the event of an emergency in the obstetric unit, the operating department practitioner (ODP), Ken, would be expected to attend, even if this meant leaving an anaesthetist with an anaesthetised patient in the emergency theatre.*

Changes in working arrangements often have consequences which could have been avoided if staff had been properly consulted.

Firstly, Ken needs to ensure he has written confirmation of what is proposed. He then needs to set out in writing, why he (and hopefully his fellow ODP colleagues) are concerned. He should seek advice both from UNISON and from his professional body the College of Operating Department Practitioners. Ken can draw on his Professional Code of Conduct and other professional evidence available from the CODP regarding the safe administration of anaesthesia.

He should seek confirmation from the employer that that there will not be any foreseeable risks to patients as result of introducing the proposed new working arrangements. He should explain that he is not prepared to move

to the new arrangements as he believes them to be unsafe.

By setting out the concerns in writing at an early stage and placing the onus on management to demonstrate their proposals are evidence based and risk assessed, Ken gains the moral high ground and can protect both patient interests and his own.

### **Social work assistant making a visit to a child in need on her own**

*Reena is employed by a local authority as a social work assistant. She works as part of a team covering an inner-city area. The team has a high caseload and Reena's social worker colleagues are often saying that they feel that they want more time to spend face to face with families but instead they are burdened with high case loads and overwhelmed with paperwork.*

*Reena's team used to be bigger but in the last couple of years the local authority has been trying to save money and has put a recruitment freeze on all vacancies. With two vacant posts, the team is struggling to handle its growing case load.*

*In an attempt to find a solution, the team manager tells all the social work assistants that they will have to take on some new responsibilities in order to share the load.*

*The manager asks Reena to make a visit to a child in need on her own. Reena has made home visits before, but she has always been with a social worker. They worked in a pair, and Reena's role was to assist her social worker colleague to gain access and talk to the child, provide back-up observation and deal with other family members. Reena is concerned about making a visit by herself. She's not sure*



*if she's got enough experience to cope on her own and she is worried that because she is by herself she won't be able to make a full assessment.*

Reena should raise her concerns with her manager, in the first instance, explaining that this attempt to share out the case load may not be in the best interest of the service user. If the manager shared Reena's views then they could draft a home visit protocol which set out the level of experience required to make home visits, the roles and responsibilities of social work assistants in supporting social workers, preparing for and participating in different types of visits and recommending two staff participate in all child protection visits.

By seeking to have the protocol agreed by the local authority, they could help improve the service as well as add weight to the team's arguments for more staff and resources.

### **Services at risk at a residential care home**

*Staff employed in a residential care home become increasingly concerned that the level and range of services are falling well short of what all professions consider to be the bare minimum. This problem is the culmination of four years' budget deficits. There is enormous pressure on care workers and other staff, made much worse by a decision to freeze all vacancies until the end of the financial year.*

*The local UNISON branch has raised the matter with the home manager but was told that regretfully the local authority who owns the home has decided the freeze must stay in place and might even extend beyond the end of the financial year. There is pressure from staff to take things further, especially after formal complaints are*

*made against two staff by relatives of elderly residents who are frustrated at the state of services at the home.*

The local steward or branch should seek a written explanation from the local authority as to the reason for the staff vacancy freeze and ask what they think are the implications for safe practice. The branch could test staff opinion by organising a meeting, preceded by a newsletter explaining their concerns. They could also undertake a quick members' survey to discover the impact of the freeze on service user care and staff safety.

They should ask all staff to immediately start recording all instances where care or safety is compromised and give guidance on how such instances should be recorded. All such instances should be contrasted with national service frameworks, policy documents, standards and local protocols.

If the meeting demonstrates strong support from staff, then they may wish to raise the matter publicly. They have already met with the home manager, but it would be worth asking to address the senior managers at the local authority – or even a full council meeting. That could be an opportunity for a staff lobby and press publicity.

They may also wish to alert the service regulator (e.g. Care Quality Commission or similar) and the local overview and scrutiny bodies.

The branch should consider involving the concerned relatives, local service user organisations, MPs and the local media. Full time trade unions officials should be involved. A briefing should be prepared explaining the concerns, but being careful not to identify, even indirectly, any individual service users. The briefing should set out clearly what practical steps staff are seeking (e.g. extra staff,



different priorities). Any attempt to single out individual staff highlighting concerns should meet with a robust response, involving full time trade union officials if necessary.

## **Ambulance staff and response times**

*Carl is an ambulance team leader. He has become increasingly unhappy at pressures to improve the response times of ambulance crews.*

*The chief executive, regarded by some as a bully, has made it clear that the current position where the organisation is near the bottom of the league table for response times is unacceptable. He says he will hold line managers responsible if they don't improve and has warned crews they need to "sharpen up their act".*

*Response times improve slightly, however the push for quick turnaround times means that crews are stretched. In several cases, crew members don't have time to note down potential or actual hazards or risks in the crew's risk or incident log. This means that incidents such as verbal abuse, low level violence or minor defects to vehicles and equipment, are not being recorded.*

*Carl has been monitoring the risk logs and he's worried that the failure to properly keep track of risks could result in a mishap or accident which could harm one of the ambulance crew or a patient. Carl, along with other crews and some managers object to the constant pressure to decrease response and turnaround times, but he is worried about raising his concerns.*

Carl – and other colleagues – should raise their concerns with their line manager. If the concerns are widespread and seem well founded, then UNISON should consider raising the matter

formally but in a way that does not highlight Carl as the lead complainant.

If the practices continue then this is just the sort of occasion where it may be appropriate to involve the local MP or the local scrutiny body who oversee health and social care services.

## **Orthotist given inadequate time for patient assessment**

*Catherine, an orthotist, is told by her employer (a private company contracted to the NHS) that the Trust has said he is spending too long with each patient and not enough patients are being seen.*

*The clinic schedule means she only has 5-10 minutes for each appointment and one day she is required to see up to 50 patients. With so many patients to be seen, Catherine has to limit her assessment and has little time to write notes. At the end of the day, she sometimes has to rush to get her notes written up so the orthotic department administrator, who is employed by the hospital, has time to file them away before she goes home. Catherine does not have access to the notes unless the administrator is present as she does not have keys for the department.*

*Catherine is concerned about the impact the situation is having on patients and on her record-keeping, so she talks to the orthotic department administrator. She is sympathetic but says it is important that the service remains efficient.*

*Catherine then decides to talk to her employer, the private contractor, and she is told that notes are not so important and she should continue to see as many patients as possible.*

*Catherine is in a difficult position, she doesn't want to upset the*



*hospital staff or her employer knowing that either could ask for her to be replaced by another clinician. Under pressure and with so little time, Catherine makes a mistake in an assessment and fitting which causes a diabetic patient to develop an ulcer due to poor fitting shoes.*

Catherine was right to raise concerns about her appointments schedule. When her concerns weren't addressed she should have spoken to her local UNISON representative to seek advice and support regarding escalating her concerns or declining to see as many patients.

Also, with help from her rep, she should have written to her manager and employer, asking for their advice and assistance in the matter, referring to the professional guidelines set out by her professional body, the British Association of Prosthetists and Orthotists (BAPO) as well as the HPC standards of proficiency for prosthetists and orthotists. That way, if she were to be reported to the HPC because of the incident with a patient, she would be able to demonstrate that she had formally raised her concerns.

Both the orthotic department administrator and the private contractor have a duty of care to patients and they could also be held accountable for any harm caused.

## Case studies – health and safety

### Porter asked to move a heavy patient

*A 20 stone patient is being moved between wards and then into bed. On arrival in the new ward, there is no mechanical assistance available to help move the patient into bed.*

*The staff nurse says she's reluctantly prepared to try to manoeuvre the patient with the help of a porter, but the porter, George, is concerned. A colleague recently hurt himself and a patient trying to do something similar. A discussion starts and the ward sister, who is under pressure to find two more beds urgently, joins in. She implies that George is being obstructive and asks them to "get a move on please" as they are already short of staff on this ward.*

George is right to be worried. Back injuries caused by unsafe lifting are an important concern. If it is not safe he should not be lifting the patient and should not be put under pressure to do so. George should confirm that he was not properly equipped to do the task, as according to the organisation's policy the patient should not be lifted without a hoist.

Meanwhile the UNISON steward should ask the ward manager to remind all staff of the policy and to ensure staff have had the necessary training to follow it.

It is important to note that if the organisation's policy had stated that 20 stone patients can be lifted without hoists by the use of several properly trained personnel then that is the procedure that should be followed.

### Cutting the corners on hospital cleaning

*Due to a flu outbreak, the number of cleaners in a hospital block with four*

*wards is short-staffed. The supervisor of the contract cleaning company says that no help is available so they'll just have to do their best, but she'll try to get some cover the following evening.*

*The next night, the situation is the same. Two of the cleaners, Harriet and Hazel, say they are not prepared to work like this as it is impossible to keep the wards clean and they have asked to meet the ward sister that evening to discuss their concerns. The manager tells the supervisor to tell Harriet and Hazel that they will be disciplined if they go ahead with the meeting.*

There is plenty of evidence that shoddy cleaning by contractors has led to outbreaks of hospital acquired infections such as MRSA which can seriously affect patients.

Despite the threat of disciplinary action, the cleaners should make their concerns clear to the supervisor and to their line manager. If possible, they should do this both verbally and in writing, making it clear that they are worried about the standards of cleanliness and their inability to maintain clean areas/wards because of the shortage of staff. They should state which areas they have been unable to clean properly and ask for assurances that the issue will be raised with the ward sister and hospital management. They should also ask to be advised of any decisions as to how to proceed in the event of continued staff shortages.

Harriet and Hazel should also state that they are raising the issue with their UNISON steward as they believe the contract between the hospital and the cleaning company is not being fulfilled and they are concerned for the safety of patients, staff and visitors.

Alternatively, if they are very concerned about the threat of disciplinary action then they may prefer to raise all of the

issues above in writing with their UNISON representative and ask the representative to pursue the matters on their behalf. It may be that the organisation will be up in arms at the sloppy performance of the contractor. Either way, keeping a careful record of concerns and finding a way of raising them is essential, even if Harriet and Hazel have to remain anonymous.

### **Medical secretary and bullying at work**

*Lesley is a medical secretary and is approaching retirement. She enjoys her job and takes pride in her commitment to accuracy and her thorough knowledge of medical terminology.*

*Lesley and her colleagues aim to turn around audio-tapes from clinics and theatre dictation in under ten days, but lately managers have been putting a freeze on providing cover for annual leave or sickness absence, meaning that Lesley and her colleagues are often voluntarily working extra hours to get the work done.*

*Their manager has little sympathy. Some of Lesley's colleagues say that they don't like the way the manager is behaving. They have heard her make comments that the team is "just a typing pool" and they could easily be replaced by "job-seekers off the bus-queue".*

*The manager says that if the team fails to meet the expected work targets then there will have to be cuts in jobs. She says to Lesley that as Lesley is close to retirement age she could be the first to go. Over the next few weeks, the manager singles Lesley out for criticism and makes pointed comments if Lesley doesn't stay late to do extra work. Lesley is feeling vulnerable and bullied. She begins to dread going to work and is worried that with all the*

*stress she is feeling she might make a mistake and get the sack. Her colleagues begin to notice that her behaviour has changed from being a solid and dependable character to being erratic and emotional.*

*The manager asks Lesley to attend a meeting. Lesley decides it's time to get advice from a local UNISON representative.*

Employers have a duty of care towards employees which may be breached by bullying and stress at work. They have a responsibility to protect against bullying, harassment and violence toward staff and to create a workplace culture where staff feel able to raise and discuss their concerns.

In Lesley's case it is important that, with the help of her trade union rep, the employer is informed in writing of the workload pressures and the actions and comments of the manager. If possible, the letter should also include any incidents or concerns expressed by other members of the team. Excessive workloads, inappropriate delegation and a macho management environment are all causes of stress and bullying and it is essential to keep a careful record of events – such as a diary – and take advice from a UNISON steward.

## Case studies – skills and training

### **Inappropriate delegation to an occupational therapy assistant**

*An occupational therapy department is under-staffed due to sickness and previously booked annual leave. There is a backlog of patients waiting for assessments. Some patients have been waiting for over two weeks and one in particular, who needs a bath board following a hip replacement, has just phoned again to complain about the delay.*

*All the registered occupational therapists (OTs) are already working with patients but there are two occupational therapy assistants (OTAs) working in the office. The manager reluctantly decides to send one of the OTAs to carry out the assessment. The OTA did this to the best of her ability but, when the bath board was fitted, and the patient tried to use it, it became apparent that the assessment had been inadequate. The contra indications of using a bath board following a hip replacement were not addressed by the OTA. Although the bath board was fitted correctly, the bath itself was too low and an attempt by the patient to use the bath board could result in the new hip dislocating.*

Although the manager was under pressure to help the patient before a formal complaint was made, the assessment should only have been carried out by a properly trained member of staff, in accordance with the British Association of Occupational Therapists Code of Professional Conduct.

If it was impossible to get cover through a locum occupational therapist, or to reallocate the work of the other registered OTs, then the patient should have had the situation politely explained to him, including the right to complain if necessary. The OTA should not have agreed to undertake the assessment

knowing she was not qualified to do it, and should have explained that to the manager and if necessary to her union representative.

### **Pharmacy technician taking on an extended role**

*Barbara is a pharmacy technician. She is back at work after a year off following a serious road accident. Her job had included an extended role in the final checking of dispensed medicines. She had the appropriate qualifications and had started her new role two months before being off. It had been agreed that on her return she would have a refresher period followed by an assessment of her continuing competency.*

*Due to staff shortages, the refresher period was condensed to one week and she was asked to recommence the full range of duties for a couple of weeks until the staffing shortage improved. Although she had some reservations, she agreed. She soon felt under pressure as she had to refresh her skills as she went along. She then missed two dispensing errors, one of which was quite serious.*

It is the responsibility of the pharmacy technician, and of Barbara's manager, to ensure she is properly trained, up to date and competent to perform the tasks required. Despite the staff shortages she should not have been asked to resume the extended role without a proper refresher course and an assurance she was competent. Normally, this would involve Barbara being observed and assessed by an accredited colleague, before she could be signed-off by the employer to resume her role.

Barbara should have sought advice from her trade union representative,

manager and professional body and insisted on additional refresher training and support. As a registered professional, Barbara could have been breaching her Code of Professional Conduct by taking on tasks she was not fully competent to do.

### **Health visitor and child protection**

*Carol, a newly qualified health visitor, makes a home visit to a family with a two month old baby. She notices a small bruise on the baby's cheek. The baby's parents say they had not noticed the bruise before and do not know how it happened. The rest of the visit goes well and afterwards Carol does not document the bruise in her findings.*

*A few days later Carol has a meeting with her mentor, an experienced health visitor who is providing supervision and support to Carol in her new role. Carol talks to her mentor about some of the visits she has made during the week and mentions the bruise. Carol's mentor is concerned that this was not included in the report following the visit. If it later became clear that the baby was suffering abuse – then Carol could be considered negligent in terms of her duty of care.*

Part of Carol's duty of care, and that of her mentor, is to ensure that she is able to practice safely and effectively. This includes having access to the necessary training and support to follow the protocols for a home visit and to keep accurate records. Carol and her colleagues should also have access to regular proactive child protection supervision to ensure good practice.

Carol's mentor should make sure that Carol is familiar with the protocols for a home visit and is accurately recording all her findings, including any findings

where no further action is taken and the rationale for this decision. Carol should be encouraged to speak to her mentor, manager or safeguarding children advisor if she has any questions or concerns following a home visit.

If Carol or her mentor is concerned about the level of training and supervision that is available to newly-qualified staff, then they could raise this with their trade union rep.



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